86-571

Supreme Court, U.S.
FILED
SEP 15 1986
JOSEPH F. SPANIOL, JR.
CLERK

NO._____

IN THE SUPREME COURT OF THE
UNITED STATES

OCTOBER TERM, 1986

KATHERINE MENDONCA,
Appellant

v

STATE OF OREGON,
Appellee

ON APPEAL FROM THE SUPREME COURT
OF THE STATE OF OREGON

JURISDICTIONAL STATEMENT

KATHERINE H. MENDONCA
IN PROPER PERSON
412 N.W. B St.
Grants Pass, Or. 97526
(503) 476-3486

QUESTIONS PRESENTED

1. This case involves the question whether Oregon Revised Statue 9.320 which is interpreted to prohibit lay persons from practicing law, to include assisting as counsel, may constitutionally be applied to appellant when she demanded unfettered counsel of choice to assist her through her criminal trial, as provided in Article Vi Amendment of the United States Constitution.

2. Whether the Oregon Revised Statue 131.005 can be Constitutionally applied to appellant since she did not give her consent to proceed with the trial by denying understanding the charges brought against her and re-refusing to accept the information thereby denying jurisdiction of the court and demanding due process of law provided in the 5'th and 14'th

Amendment to the United States Constitution.

3. Whether appellants rights have been violated by the court obstructing due process under the 5'th and 14'th Amendment by denying her challenges for cause, "Contrary to Oregon Law" (ORS 46.800 and ORCP 57D) when she motioned the court to dismiss jurors for not knowing or understanding the phrase "Jury Lawlessness", and "Jury Nullification".

4. Whether the appellants Constitutional rights of the 14'th Amendment, equal protection clause, were violated by being damaged through the workings of an ordinance that was not being applied to every second hand and junk dealer within its jurisdiction.

5. This case involves the question whether the workings of a statue ORS 133.545 was constitutionally

violated by a search warrant being issued unjustly and without cause and paperwork being removed not relevant to the warrant and therefore violating appellants 4'th Amendment rights.

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JURISDICTION ON APPEAL

IN THE SUPREME COURT OF THE

UNITED STATES

October Term, 1986

No._____

Katherine H. Mendonca,
Appellant

v.

STATE OF OREGON,
Appellee

ON APPEAL FROM THE SUPREME COURT

OF THE STATE OF OREGON

JURISDICTIONAL STATEMENT

DENIAL BELOW

The denial of the Supreme Court of Oregon is reproduced herein as Appendix "A"-1 and "A"-2.

GROUNDS OF JURISDICTION OF SUPREME COURT

This appeal arises from denial of review and reconsideration on two separate trials. Rule 10.6 covers authority for only one Jurisdictional Brief.

This appeal arises from the denial for review by the Supreme Court of Oregon. The denial order of the Supreme Court of Oregon was entered on the 7'th day of May 1986. Appellant submitted a motion for Reconsideration and supporting brief with the clerk of the Supreme Court of Oregon on the 22'nd day of May, 1986. This motion was also denied on the 17'th day of June, 1986.

JURISDICTION

The jurisdiction of this court is invoked wnder the provisions of Title 28 United States Code Section 1257 (3)

and the United States Constitution

Article 3 Section 2 clause 2.

APPLICABLE CONSTITUTIONAL PROVISIONS AND STATUTES

The sixth Amendment to the United States provides in pertinent part:

> *. . . "and to have the assistance of counsel for his defence."

ORS 9.320 Except for the rights reserved to litigants to prosecute or defend a cause in person, no person shall practice law or represent himself as qualified to practice law unless he is an active member of the Oregon State Bar.

The 5'th and 14'th Amendment to the United States provides in pertinent part:

> . . . "nor be deprived of life liberty, or property, without due process of law".

ORS 131.005 Preliminary Provisions

> (9) "District Attorney's Information means a written accusation by a district attorney and (a) if filed with a magistrate to charge a person with the commission of an offense

other than an offense punishable as a felony, serves both to commence an action and as a basis for prosecution thereof.

ORS 133.045 CITATION IN LIEU OF CUSTODY:

Shall apply in any instance when a person is subject to arrest on a misdemeanor or violation charge or on a felony charge which may be deemed a misdemeanor charge after sentence is imposed (1) the arrest is made without a warrant pursuant to ORS 133.310 or
(2) The magistrate before whom an information or complaint is filed authorizes it.

The 5'th and 14'th Amendment to the United States provides in pertinent part:

. . . " nor be deprived of life liberty or property without due process of law.

ORS 46.800 CRIMINAL PROCEDURES:

(2) In criminal actions in District Courts each party may challenge for cause and three preemptory challenges, and no more.

The 14'th Amendment to the United States provides in pertinent part:

. . . " nor deny any person

within its jurisdiction the equal protection of the laws."

City Ordinance 4.12.030 Recordkeeping requirements:

> A permanent daily record in a form prescribed by the chief of police, in the English language, shall be kept by every junk dealer, second hand dealer or pawnbroker, of the items purchased or sold, received or given away, with adequate description thereof and with the name of the person or persons selling or delivering the same, and a brief description of such person or persons if such person be unknown to the dealer. Such record shall at all times be open to the inspection of the police and every junk dealer, second- and pawnbroker shall furnish daily to the police a copy of such record, and provided further that the chief of police may demand on written notice, a report of all items in the possession of such junk dealer, secondhand store dealer or pawnbroker for any given period.

The 4'th Amendment to the United States provides in whole:

> The right of the people to be secure in their persons, houses papers, and effects, against unreasonable searches and seizure, shall not be violated, and no warrants shall issue but up-

upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

ORS 133.545 Issuance of Search warrant:

(1) A search warrant may be issued by a judge.
(2) Application for a search warrant may be made only by a district attorney or by any police officer.
(3) The application shall consist of a proposed warrant in conformance with ORS 133.565 and shall be supported by one or more affidavits particularly setting forth the facts and circumstances tending to show that such things are in the places, or in the possession of the individuals, to be searched.

STATEMENT OF THE CASE

On November 20, 1984 appellant Katherine H. Mendonca, was cited for City Ordinance 4.12.030 failure to fill out paperwork (for secondhand store) and first degree theft for a Baby carseat valued at $5. Appellant

Appellant prior to arraignment demanded her rights to have simple citation subjugated to a formal complaint as proper due process guaranteed by the 14'th Amendment of the United States.

Upon arraignment of 12-3-84, appellant appeared specially, refusing the district attorney's information for prosecution and questioned jurisdiction to proceed without due process of law. Appellant was charged with a city ordinance of failure to fill out paperwork, and second degree theft. Appellant on record denied understanding the charges brought against her. Appellant demanded counsel of her choice and the court replied that defendant may hire a lawyer.

At a motion hearing of 12-31-84 all of appellants motions were denied to include quesrions raised on appeal; (1) Unfettered counsel of her choice;

(2) Motion to suppress evidence obtained with faulty search warrant; (3) Notice and demand at law for formal verified complaint or in alternative dismiss. (4) Motion to dismiss for failure of due process. Appellant motioned the court to dismiss for failure to have a cause of action and therefore had no jurisdiction to proceed.

Appellant upon her own motion separated the trials.

During trials of 4-25-85 (Failure to fill out paperwork - guilty, 5-1-85 theft two, hung jury, 6-12-85 second degree theft, guilty) appelant motioned the court for dismissal of jurors for cause. During Voire dire, jurors were found not to know the meaning of the phrase "July Nullification", and "Jury Lawlessness", which is a qualification for a juror.(Sparks vs US., 156 US 51 (1895). Request was denied by the court for dismissal for cause.

During the trial of 4-25-85 states witness admitted to not having all second hand stores subjected to the ordinance. This statement by Det. Cooper brings up the question of selective prosecution in violation of appellants rights to equal protection of the laws within the 14'th Amendment.

Appellant was found guilty on both charges by a jury and sentenced with a fine and incarceration by the court.

On 5-16-85 appellant was danaged by immediate incarceration to include solitary confinement, after stay of sentencing and notice of appeal was refused in court. Appellant released OR pending appeal on 5-20-85.

All questions raised in district court, County of Josephine were appealed to the Oregon State Appellate Court. Decision on 12/26/85 was affirmed with-

out opinion. Review and Reconsideration to the State Supreme Court of Oregon were denied.

A substantial amount of injustice has been done to the Appellant in the lower courts and for that reaseo is requesting this court to review all questions presented.

SUBATANTIALITY OF FEDERAL QUESTION

The argument of the plaintiff-respondent to the appellate court for requesting unfettered counsel of her choice was that defendant has no rights to be represented in court by non-lawyer "counsel" of her choice.

Appellant argued to appeals court in reply brief that she never argued for a layman to represent her. Counsel and lawyer are two distinct words and lawyer is not mentioned in Article Vl of the Consitution.

Gideor v Wainwright 372 US 335 and Burgett v Texas 389 US 109

If there is any truth to the old proverb that "One who is his own lawyer has a fool for a client", The court by it's opinion today now bestows a Constitutional Right on one to make a fool of himself. Faretta v Calif, 422 US 806 (1975) Blackmum dissenting.

"...his Right to be heard through his counsel in unqualified". Chandler v Fretag 348 US 3

The United States Constitution , ordained and established by the people, for their protection, shall not be superceded or amended by any act of congress, or by anything in the Constitution or laws of any State.

A law repugnant to the Constitution is void; and the courts, as well as other departments, are bound by that instrument. Marbury vs Madison (1803) 5 US 368-391

"Where right's secured by the Constitution are involve, there can be no rule making or legislation which would abrograte them." MIRANDA V ARIZONA (1966) 348 US 436, 491

The Constitution is a written instrument. As such, its meaning does not alter. That which it meant when it was

it means now." SOUTH CAROLINA V U. S., 199 U.S. 437, 448 (19005)

"If the state should deprive a person of counsel, it would not be due process of law.' POWELL V ALABAMA (1932) 287 U.S. 45, 70

"If this requirement of the 6'th Amendment to the Constitution of the United States is not complied with, the court no longer has jurisdiction to proceed." JOHNSON V ZERBST, 304 U.S. 458, 468

The appellant questioned the jurisdiction of the court to proceed without a formal complaint. Appellant never gave the court jurisdiction by appearing specially as a soverign. Appellant did not give permission to proceed with the prosecution under an "information". Once jurisdiction is challenged it must be proven. HAGENS V LAVINE 415 U.S. 533, note 3

"Where Jurisdiction is not squarely challenged, that subject matter is presumed to exist. BURKS V LASKER, 441, US 471

No sanction can be imposed absent proof of jurisdiction. STANDARD B OLSON 76 S et 768

The judgment of conviction pronounced by court without jurisdiction is void. JOHNSON V ZERBST 304 USM 458m 468

Jury nullification, under the 5'th and 14'th Amendment is guaranteed her rights due process of law as a soverign citizen. Without a qualified juror the appellant could not receive a fair trial. There was a grave injustice done when the lower courts denied appellant this rights and proceeded forward.

> The Judge assumes the jury knows about jury nullification. It is a qualification of a juror. SPARKS V U.S., 156 US5
>
> "Jury lawlessness is the great corrective of law in its actual administration." DEAN ROSCOE POUNDS 44 Am L Rev at 18 (1910)

Interpretation of the city ordinance is broad and could be used by the police powers to discriminate against individuals. The ordinance of and by itself could not be interpreted as unconstitutional byt only through its working, by damaging an individual soverign citizen could the ordinance be unconstitutional.

The police powers were not enforcing the law by not requiring all persons within their jurisdiction to conform to the law by filling out police forms when purchasing items from private individuals. This includes private and non-profit orginizations, such as Salvation Army and Goodwill industries. The selective prosecution is an abridgment to the appellates 13'th Amendment rights of equal protection of the law.

> All laws should receive a sensible construction. General terms should be so limited in their application as not to lead to injustice, oppression or an absurd consequence. It will always therefore, be presumed that the legislature intended exceptions to its language, which avoid results of this nature. UNITED STATES V KIRBY, 7 Wall 1482
>
> An act of the legislature which has for its object the preservation of the public interests against the illegal deprevations of private individuals ought to be sustained, unless it is plain-

> ly violative of the Constitution, or subversive of private rights. LAWTON V. STEELE, 152 U.S. 133, 140.
>
> The legislature may not, under the guise of protecting the public interests, arbitrarily interfer with private business, or impose unusual and unnecessary restrictions upon lawful occupations. Its determination as to what is proper exercise of its police powers is not final or conclusive, but is subject to the supervision of the courts. LAWTON V. STEELE, 152 U.S. 133 GOLDBLATT CT al vs TOWN OF HEMPSTEAD, 369 US 590, 594-5

There was no violation of the law no crime committed, no injured party and the search and seizure was illegally performed. Papers taken from appellants desk were illerelevant to the search warrant and were taken at will by the officer upon continual objection by appellant. The citation was served by this same officer, who was also the complaintant for the state. The warrant was unjustly issued and violated the rights of the appellant to be secured in her property, Amendment four.

> The 4'th Amendment is a limitation upon police conduct even if the police officers stop short of something called a techinical arrest of a "Full blown search." 892 20th L ed.
>
> It is clear, of course, that no act of congress can authorize a violation of the Constitution. but under familiar principles of constitutional ajudication, our duty is to construe the statute. if possible, in a manner consistent with the fourth Amendment. Almeida-Sanchez v. United States, 413 U.S. 266 (1973).

CONCLUSIONS

The record clearly shows the violation of the lower courts and the State Court was unwilling to go against their decisions. There was a substantial amount of injustice done in the court and for this reason the appeal is being sought by the United States Supreme Court so the injustice will not run rampant.

The court records clearly establishes that the appellant objected through the whole proceedings. The record also shown that appellant was actually damaged by the workings of the local

ordinance and or statutes by being enforced under color of law.

The appellate courts failed in their duty to uphold justice in the lower courts. The appellant has proved beyond any reasonable doubt by statement of facts and affidavits entered in the court records the injustice that was taking place during the proceedings. The jury was instructed on record, that if the court make mistakes there were higher courts whereby the appellant could take her complaints.

Therefore the United States Supreme Court must exercise its jurisdiction in this case or lawlessness will reign supreme in the courts of Oregon.

Dated this 11'th day of September 1986.

Respectfully Submitted,

Katherine H. Mendonca

Katherine H. Mendonca
Propria Persona

Subscribed and sworn to before me this 11'th day of Septerber, 1986.
Notary Public of Oregon.

Susan D. Wright
NOTARY PUBLIC — OREGON
MY COMMISSION EXPIRES 5-8-89

CERTIFICATE OF SERVICE

I, the undersigned, do HEREBY CERTIFY that I served three copies of the foregoing Jurisdictional Brief's on the 12'th day of Sept. 1986, by mailing the true copies, with postage prepaid, to the attorney for the appellee, at the following address: Thomas H. Denney, Assistant Attorney General, 400 Justice Building, Salem, Oregon 97310.

Katherine H. Mendonca
Katherine H. Mendonca
Propria Persona
412 N.W. B St.
Grants Pass, Or. 97526

APPENDIX A-1 & 2

IN THE SUPREME COURT OF THE

STATE OF OREGON

STATE OF OREGON Respondent, v MENDONCA, KATHERINE Petitioner.	ORDER DENYING REVIEW CA A35971 CA A36302 SC S32631 SC S32630

The Court has considered the petition for review and ORDERS that it be denied.

Date: May 07, 1986.

/s/ EDWIN J. PETERSON
Edwin J. Peterson
Chief Justice

Copies To:
Denney, Thomas H. Attorney for Respondent
Mendonca, Katherine Attorney for Self

APPENDIX A-3 & 4

STATE OF OREGON SUPREME COURT

STATE OF OREGON, Respondent, v Katherine Mendonca, Petitioner.	ORDER DENYING RECONSIDERATION CA A35971 CA A36302 SC S32631 SC S32630

The Court has considered the petition for reconsideration and ORDERS that it be denied.

DATE: June 17, 1986

/s/ EDWIN J. PETERSON
Edwin J. Peterson
Chief Justice

Copies: Thomas H. Denney
Katherine Mendonca

APPENDIX A-5 & 6

SUPREME COURT OF THE STATE OF OREGON

KATHERINE MENDONCA, Appellant v STATE OF OREGON.	CA A36302 CA A35971 SC S32361 SC S32630

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Notice is hereby given that Katherine Mendonca, the appellant above named, hereby appeals to the Supreme Court of the United States from the final order of Edwin J. Peterson, Chief Justice affirming the judgment of conviction, entered herein on June 17, 1986.

This appeal is taken pursuant to 28 U.S.C. 1257.

Dated: July 13, 1986

Katherine Mendonca
Propria Persona
412 N.W. B St.
Grants Pass, Or. 97526

APPENDIX A -7 & 8

IN THE COURT OF APPEALS

OF THE STATE OF OREGON

STATE OF OREGON, Respondent,

V.

KATHERINE MENDONCA. Appellant.

Court of Appeals Case No.: CA A35971
CA A36302

Trial Court Case No.: 84-1056-M (D)
84-1057-M (D)

Appeal from Josephine County

Judge: Allan H. Coon
Judge: J.L. O'Neal

Date submitted on briefs: Nov. 27, 1985

Before: Richardson, Presiding Judge,
Joseph, Chief Judge,
Warden, Judge

Attorney for Appellant: Katherine
Mendonca, Pro Se

Attorney for Respondent: James E. Mountain

Affirmed without opinion.

Date Filed: December 26, 1985

Date Supreme Court denied petition for review: May 7, 1986

Date Supreme Court denied petition for reconsideration: June 17, 1986.

Date appellate judgment enforceable:
August 15, 1986

10/85

COURT OF APPEALS OF THE STATE OF OREGON

STATE OF OREGON, Plaintiff-Respondent, v KATHERINE MENDONCA, Defendant-Petitioner.	Josephine District 84-1057-M 84-1056-M CA A36302 CA A35971

ORDER STAYING ISSUANCE OF

APPELLATE JUDGMENT

Appellant has moved for a stay of issuance of the appellate judgment herein pending disposition of her petition to the United States Supreme Court. The motion is allowed. ORAP 11.04(1).

William Richardson
Presiding Judge

Dated: August 14, 1986

c: Katherine Mendonca
Thomas H. Denney
Josephine County Circuit Court Clerk

APPENDIX A-10

In The District Court Of The State Of Oregon For Josephine County Misdemeanor Docket.

STATE OF OREGON vs. KATHERINE MENDONCA } No. 84-1057-M

Arraignment: 12/3/84 - 1:00pm
Judge L. O'Neal

Charge: (Read) THEFT IN THE SECOND DEGREE

Defendant informed of:
1. Right to attorney
2. Right not to make statement: could be used against him.
3. Right to plead guilty or not guilty.

Attorney: Waved
Plea. Not guilty (entered by court).
Security Amt. 1/14/85 OR'D 1)LACD 2)CTD
3) Mug & Print $2530/$280
def #275910

Finding: 6/17/85 by Judge O'Neal
Sentence: Fine $200 + $20 Jail 6 Mo.
Susp. Sent. 3 years
Probation 3 years court

Terms: 1)LAC 2)30 days jail consecutive with 84-1056-M -Stay pending appeal. Appeal within 30 days
3)TINE

12/3/84 Motion to consolidate allowed.

APPENDIX A-11

IN THE DISTRICT COURT OF THE STATE OF OREGON FOR JOSEPHINE COUNTY MISDEMEANOR DOCKET.

STATE OF OREGON vs.	No. 8401056-M
KATHERINE MENDONCA	

Arraignment: 12/3/84 - 1:00pm
Judge L. O'Neal

Charge: (Read) Failure To Keep Second Hand Dealers Records

Defendant informed of:
1. Right to Attorney
2. Right not to make statement
3. Right to plead guilty or not guilty

Attorney: Waved

Plea: Not guilty (entered by court)

Security Amount: $2530/$280
ORD 1)LAC 2) Ck date 3)Booking

5/16/85 Sentence: Fine $50 Jail 20 days

Motion to consolidate approved 2/3/84